the reasoning they contain and the inferences to be drawn therefrom. It does not seem sound to say that the act of abandonment necessarily ends the contract, or that the first one of the parties who obtains possession of the derelict has the right to elect whether or not the contract shall continue to be binding, or that the cargo-owner may always rescind when the ship has been deserted. The cases are clearly analogous to those of impossibility, danger,[6] or sickness,[7] where the party affected is always excused from liability for not going on under the contract, but where the future rights of the parties are dependent, principally, upon the materiality of the breach, though, to a certain extent also, upon the subsequent conduct of the delinquent party. So, here, if the result of an excusable abandonment should be to make the carrying out of the contract a different undertaking from that originally contemplated, neither party would be further bound;[8] but, if the breach be but a slight one, so that the cargo is not harmed nor its owner injured materially by the delay, and if the master should give prompt notice of his intention to proceed before the cargo-owner has changed his position, he should be allowed to go on, for it is not uncommon for the law to disregard a technical breach or permit a slight one to be cured.[9] Of course, as a practical matter, the breach will nearly always be material in these instances, but a case can easily be conceived in which the storm unexpectedly subsides and the crew returns to the ship in a few hours. It is sometimes argued that the ship-owner should be allowed to continue, in analogy to the rule in cases of shipwreck, where the goods may even be transferred to another vessel and the freight earned;[10] but that is a different case, for there the crew are involuntarily separated from the vessel without any act of the will, and consequently there is no real abandonment.

LIABILITY OF FOREIGN REAL ESTATE TO COLLATERAL INHERITANCE TAX. — The very general adoption of inheritance and succession taxes has led to a careful examination by the courts of the theory on which they are based. An inheritance tax seems clearly to be not a tax on the property itself, nor on the legatee, but a tax on the privilege of succeeding to property on the death of the owner.[1] The fact that the burden of the tax may ultimately fall on the property, and that the property is sometimes subjected to a lien until the tax is paid, has led some courts to construe the tax as one on the property as well as on the privilege;[2] but this seems to confuse the nature of the tax with the method of its enforcement. The right to take property by descent or devise is a privilege granted by the law, not a natural right; and the sovereignty which grants it may impose conditions on it.[1] Theoretically, it would seem that the state might revoke this privilege at any time, and make itself the universal legatee of all decedents. Since succession to property is by permission of the sovereign, the permission can relate only to property over which the sovereign has control. A state has absolute dominion over all property within its territorial bounds, and may

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[6] Lakeman *v.* Pollard, 43 Me. 463.
[7] Poussard *v.* Spiers, 1 Q. B. D. 410.
[8] Jackson *v.* The Union Marine Insurance Co., L. R. 10 C. P. 125.
[9] Bettini *v.* Gye, 1 Q. B. D. 183.
[10] Shipton *v.* Thornton, 9 Ad. & E. 314.

[1] Magoun *v.* Illinois, etc., Bank, 170 U. S. 283.
[2] Bittinger's Estate, 129 Pa. St. 338.

fix rules for its transfer, descent, and devolution.[8] In the case of personalty each state allows the property within its jurisdiction to pass by the law of the state of the decedent's domicile:[4] two states, therefore, each grant a privilege, and each, it seems, if it chose, could exact a tax. But in the case of realty, title passes by the *lex rei sitæ*, and that state alone controls the privilege of succession.[5] Where, however, the testator has directed the sale of his foreign real estate, it has been argued that an equitable conversion is worked, and that therefore the state of his domicile may impose a tax on the proceeds as personalty. A recent case before the Supreme Court of Pennsylvania upholds this position, consistently with previous decisions in that jurisdiction. *In re Vanuxem's Estate*, 61 Atl. Rep. 876.

It would seem that the question as to whether a conversion has taken place must be determined by the law of the state where the land is situated, since that state alone has dominion over the property. But if it is determined that there is a conversion, succession will occur by the law of the decedent's domicile, as in the case of other personalty.[6] The latter state may then exact a bounty for the privilege granted by it. An analogous question arises in the case of the interest of a deceased partner in foreign real estate belonging to the partnership, under the English rule that, in the absence of any agreement, partnership realty is *ipso facto* in the view of equity converted into personalty.[7] In such event, the tax has been held valid,[8] and may be supported on the above reasoning. But if the conversion is not effected by the will itself, but is to be effected only at some future time, it seems that succession will take place by the *lex rei sitæ*, and therefore the state of testator's domicile having granted no privilege can exact no tax. Where, for example, a testator devised foreign real estate to his wife for life, and upon her death directed its sale and the investment of the proceeds, the tax is not imposable by the state of the testator's domicile.[9] The fact that the proceeds of the sale are subsequently brought within the taxing state gives it no additional power, for the succession takes place at the moment of death, and the character of the property at that time is controlling.[10]

CHARITABLE BEQUESTS TO UNINCORPORATED SOCIETIES. — When property is left to an existing, but unincorporated society, whose purposes are not charitable or religious, the beneficiary is commonly held incapable of taking, irrespective of the rule against perpetuities, by reason of its own inherent incapacity to hold legal title; and the bequest or devise fails.[1] But when property is left to a charitable or (where statutes of mortmain do not prevent it) to a religious society, expressly in trust for some religious or charitable purpose, the law is unsettled. By far the greater part of the cases hold such bequests or devises good, relying generally upon the statute of 43 Elizabeth or some of its modern counterparts[2] which are designed

[8] McCormick *v.* Sullivant, 10 Wheat. (U. S.) 192.
[4] See Matter of Estate of Swift, 137 N. Y. 77, 86.
[5] Matter of Estate of Swift, *supra.*
[6] See *Re* Stokes, 62 L. T. 176. But see Estate of Swift, *supra, contra.*
[7] St. 53 & 54 Vict. c. 39, §§ 20, 22.
[8] Forbes *v.* Steven, L. R. 10 Eq. 178; *Re* Stokes, *supra.* But see Custance *v.* Bradshaw, 4 Hare 315.
[9] Hale's Estate, 161 Pa. St. 181. [10] Drayton's Appeal, 61 Pa. St. 172.

[1] Carrier *v.* Price, (1891) 3 Ch. 159.
[2] St. 43 Eliz. c. 4. Laws of N. Y., c. 46, § 93.